FILE COPY

FILED
JUN 2 8

Supreme Court of United States

OCTOBER TERM, 1931.

No. 158

AMOS SHRIVER, *Appellant*,

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA
Appellee.

STATEMENT SHOWING BASIS OF JURISDICTION, AS REQUIRED BY RULE TWELVE.

JAMES M. PARSONS,
Des Moines, Iowa,
Counsel for Appellant.

W. E. WALLACE,
H. B. CLAYPOOL,
Williamsburg, Iowa,
Of Counsel.

Supreme Court of United States

OCTOBER TERM, 1931.

No. 158

AMOS SHRIVER, *Appellant*,

vs.

WOODBINE SAVINGS BANK OF WOODBINE, IOWA, *Appellee.*

STATEMENT SHOWING BASIS OF JURISDICTION, AS REQUIRED BY RULE TWELVE.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Appellant, Amos Shriver, in support of the jurisdiction of this Court to review the above entitled case on appeal respectfully states:

This appeal is taken from the judgment entered in the Supreme Court of the State of Iowa, April 10, 1931, in favor of the Woodbine Savings Bank of Woodbine, Iowa, and against the appellee, Amos Shriver.

(a) Statutory Provision sustaining the Jurisdiction of This Court.—The statute sustaining the jurisdiction of this court to review this case is Section 237 of the Judicial Code as amended by the Act of February 13, 1925, Chapter 229, 43 Stat. 936. (United States Code, Title 28, Section 344) (Rule 46 of this Court).

The procedure is by appeal in lieu of writ of error under the former practice. This is provided for by the Act of January 31, 1928, Chapter 14, 45 Stat. 54, as amended by the Act of April 26, 1928 Chap. 440, 45 Stat. 466.

(b) Date of Judgment Sought To Be Reviewed and On Which Application for Appeal was Presented.—The decision of the Supreme Court of Iowa, from which this appeal is taken, was filed April 10, 1931 (R. 86).* The judgment of the Supreme Court of Iowa is dated April 10, 1931 (R. 127). The application for appeal therefrom was presented and the order allowing the appeal entered May 20, 1931 (R. 128, 132). The citation was issued on the 20th day of May, 1931, and served May 22, 1931 (R. 136).

(c) Nature of Case and Rulings of Iowa Supreme Court. —Suit by Woodbine Savings Bank, Appellee to recover upon an assessment from appellant as a stockholder of the bank. The assessment was for the purpose of restoring impaired capital (R. 2).

The facts of the case were in the main embodied in a stipulation between the parties (R. 11).

Appellee was incorporated as a savings bank under the law of Iowa on May 6, 1891 (R. 12, line 18) and adopted Articles of Incorporation (R. 21, line 14). Appellee re-incorporated and renewed its corporate existence on May 11, 1911 and adopted amended and substituted Articles of Incorporation (R. 12, line 24, R. 23, line 30).

Appellant was the owner of twenty-six shares of the capital stock of appellee bank of the par value of one hundred dollars per share. Appellee acquired his twenty-six shares of stock at the following times: Ten shares on May 18, 1891,

---

Note:

* The record has not as yet been printed. All references herein to the record refer to the pages of the original record as prepared by the Clerk of the Iowa Supreme Court.

ten shares on April 16, 1906 and six and one-sixth shares on February 14, 1917. Because appellee bank was being criticized by the Iowa Banking Department for having some of its shares owned in fractional parts, appellant surrendered his certificate evidencing the six and one-sixth shares and in lieu thereof received on June 8, 1926, a certificate representing the six shares of stock evidenced by his former certificate for six and one-sixth shares. (R. 18, line 19). Appellant's stock was fully paid up stock (R. 46, line 7).

No provision relative to assessment to restore impaired capital is made in the Articles of Incorporation originally adopted (R. 21, line 14), nor in the amended and substituted Articles of Incorporation adopted May 11, 1911 (R. 23, line 30), nor in the stock certificates evidencing the ownership of the stock (R. 26, line 24), nor in the by-laws of appellee bank (R. 46, line 13). The whole basis claimed for liability on the part of appellant is found in the statutes of Iowa.

The pertinent legislation originated in an act of the Iowa General Assembly effective May 5, 1894 (Acts 25 G. A. of Iowa, Chap. 29) (Appendix, page 9). This act was codified and carried forward into the Code of Iowa, 1897, as Sections 1878, 1879, and 1880 thereof. (See Appendix, page 10). It was further codified and carried forward into the Code of Iowa, 1924, as Sections 9246, 9247, 9248, 9249, and 9250 thereof. (See Appendix, page 11). In 1925, the Forty-first General Assembly of Iowa enacted an amendment to Section 9248 of the Code of Iowa, 1924 (41 G. A., Chap. 181) (Appendix, page 13), which was carried forward and codified as Section 9248-a1, Code of Iowa, 1927 (Appendix, page 15). The amendment made by the 41 G. A. (41 G. A., Chap. 181) became effective March 13, 1925 (Appendix, page 13).

The statutes, together with the amendment of the Forty-first General Assembly, as they appear in the Code of Iowa, 1927 are set out in the Appendix, pages 9 to 15.

On February 15, 1927, the Superintendent of Banking of Iowa found the capital stock of appellee bank impaired one hundred per cent. Pursuant to Sections 9246, 9247 and 9248, Code of Iowa, 1927, an assessment was ordered and laid upon the stockholders to make good the impairment (R. 13, line 17). Appellant's twenty-six shares of stock were advertised and sold for One Dollar per share or a total of $26.00. (R. 16, line 13).

This suit was then brought under Chapter 181, Acts 41 G. A. (Sec. 9248-a1, Code of Iowa, 1927) to recover from appellant the amount of the assessment over what was realized from the sale of the stock or a total sum of $2574 (R. 2).

Appellant by answer in the trial court attacked Chapter 181, Acts 41 G. A. (Section 9248-a1, Code of Iowa, 1927) as applied to him in that it impaired the obligation of his contract as a stockholder in the bank; in violation of Section Ten, Article One Constitution of United States and also that it deprived him of his property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States (R. 6, 8).

The trial court found that 9248-a1, Code of Iowa, 1927 was not vulnerable to the attack made against it by appellant and rendered judgment against appellant for the amount claimed (R. 50, 56, line 28).

The assessment was made by the Board of Directors of appellee bank (R. 14, line 3, R. 32, line 14).

Appellant never attended and was given no notice of any stockholders' meeting in connection with the assessment (R. 17; line 15).

Appellant perfected an appeal to the Iowa Supreme Court from the judgment and assigned as errors the invalidity of Section 9248-a1, Code of Iowa, 1927 under Section Ten, Article One, Constitution of the United States in that it impaired the obligation of contract and also under the Fourteenth

Amendment to the Constitution of the United States in that it deprived him of his property without due process of law (R. 63, 64, 65).

On June 24, 1929, the Iowa Supreme Court filed its opinion reversing the judgment below and holding that Section 9248-a1 Code of Iowa, 1927, impaired the obligation of appellant's contract as a stockholder in the bank and was invalid as applied to appellant for any impairment of capital stock existing at the time of the enactment of the statute (R. 70, 79). In this opinion the Iowa Supreme Court held the statute valid as to any impairment that came into existence after the enactment of the Statute. (Division IV of opinion, R. 82).

Because of Division IV of this opinion, appellant filed petition for rehearing to correct same, and appellee also filed petition for rehearing. These petitions for rehearing were granted by the court (R. 85).

On April 10, 1931 the Iowa Supreme Court rendered its opinion affirming the judgment below (R. 86) and holding the statute, Section 9248-a1 Code of Iowa, 1927, did not impair the obligation of contract as applied to appellant but was a permissible change of remedy for a liability existing before the enactment of Chapter 181, Forty-first General Assembly. There is a dissenting opinion by three judges of the Iowa Supreme Court sustaining appellant's contention both as to impairment of contract and due process of law (R. 102).

The majority opinion of the Iowa Supreme Court recognizes that appellant had a contract with appellee bank and the other stockholders which was within the protection of the Constitution of the United States. However, the Iowa court so construed that contract and the statutes forming a part thereof as to find an obligation upon appellant to pay the assessment and sustained Section 9248-a1 Code of Iowa, 1927 as a mere change of remedy.

The majority opinion of the Iowa Supreme Court does not mention or discuss appellant's contention that Section 9248-a1, Code of Iowa, 1927, violates due process of law. The minority opinion holds the statute vulnerable to appellant's attack on the grounds of impairment of contract and due process. Thus the Federal questions presented were raised by appellant at the *commencement of this* proceeding, were presented and passed upon by the Iowa Supreme Court, and were determined adversely to the Constitutional rights claimed. The first opinion of the Iowa Supreme Court appears in the record (R. 70) and is reported in 226 Northwestern 374. The final opinion appears in the record (R. 86) and is reported in 236 Northwestern 10.

An assessment to restore impaired capital of a bank, such as is involved in this case, is not to be confused with an assessment upon stockholders to pay the debts of the corporation upon its insolvency. The distinction is well-defined in *Leach v. Arthur Savings Bank*, 203 Iowa 1052, *Delano v. Butler*, 118 U. S. 634-653.

In substance this case is one where the appellant became a stockholder in appellee bank at a time when the existing law of Iowa imposed no personal liability upon him to pay an assessment to restore impaired capital. His stock was fully paid up stock. Long subsequent to the time he became a stockholder, the legislature of Iowa enacted Chapter 181, 41st G. A. making him personally liable for the deficiency in an assessment after the sale of his stock, and the Iowa Supreme Court has upheld this statute as applied to appellant. The Iowa Supreme Court has upheld the validity of this statute against appellant's attack that it impairs the obligation of his contract as a stockholder and takes his property without due process of law.

(d) Cases Believed to Sustain the Jurisdiction of this Court.

(a) Impairment of Contract.

Columbia Ry., Gas & Electric Co. v. State of South Carolina, 261 U. S. 236, 244.
Detroit United Ry. v. Michigan, 242 U. S. 238, 246-248.
Northern Pacific Ry. Co. v. State of Minnesota, ex rel. City of Duluth, 208 U. S. 583-589-591.
Stearns v. Minnesota, 179 U. S. 223-232.
United States ex rel. Von Hoffman v. Quincy, 4 Wall. 535-550.
The Bridge Proprietors v. Hoboken Co., 68 U. S. (1 Wall.) 116-141.
Harrison v. Remington Paper Co., (U. S. C. C. A.) 140 Fed. 385.

(b) Due Process of Law.

Spencer v. Merchant, 125 U. S. 345-352.
Holden v. Hardy, 169 U. S. 366, 390.
Chicago St. P. M. & O. Ry. Co. v. Holmberg, decided December 1, 1930, 51 Sup. Ct. Rep. 56 (Not yet officially reported).
Great Northern Ry. Co. v. Cahill, 253 U. S. 71.

Where the state court has sustained legislation over the objection that it impairs the obligation of contract, it is for this court to say whether there is a contract, the extent of its obligation and whether its obligation has been impaired by the subsequent legislation. Where state statutes form the basis of or are embodied in a contract, this court, upon the merits, makes its own construction of the contract and is not bound by the construction placed upon the statutes by the state court.

That appellant's relationship and liability to the corporation is contractual is well-settled.

Harrison v. Remington Paper Company, (U. S. C. C. A.), 140 Fed. 385.
First National Bank v. Hawkins, 174 U. S. 365.
Whitman v. National Bank, 176 U. S. 559.
Richmond v. Irons, 121 U. S. 27-55-56.

Under the 14th Amendment to the Constitution of the United States arbitrary legislation that takes the property of one man and gives it to another is invalid. In the present case, long subsequent to the time appellant became the owner and holder of his stock in appellee bank, an act is passed imposing upon him personal liability to the bank after sale of his stock. Appellant is forced to pay to the bank a sum sufficient to make the capital stock formerly owned by him worth its full face value in the hands of the purchaser who obtained it for $1.00 per share. Such result is a simple taking of appellant's property and giving the same to the new stockholder. The statute is arbitrary and unreasonable and offends fundamental principles of justice. It is submitted that this case is one properly within the jurisdiction of this court.

Respectfully submitted,
JAMES M. PARSONS,
Des Moines, Iowa,
Counsel for Appellant.

W. E. WALLACE,
H. B. CLAYPOOL,
Williamsburg, Iowa,
Of Counsel.

APPENDIX.

CHAPTER 29, ACTS OF THE TWENTY-FIFTH GENERAL ASSEMBLY OF IOWA.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That should the capital stock of any state or savings bank organized under the laws of this state be now, or hereafter become impaired by losses or otherwise, the board of directors of such state or savings bank may by consent of the Auditor of State, within thirty (30) days after passage of this act or after such impairment shall come to their knowledge, cause the deficiency to be made good by assessment upon the shareholders pro rata for the amount of stock held by them. Notice of such assessment to be given in writing signed by the president or vice-president and attested by the cashier or secretary of the association with the corporate seal thereof. The deposit of said notice in the postoffice directed to the shareholders at their last known address shall be sufficient for the purpose of this act.

SEC. 2. Should any of the shareholders in any state or savings bank organized under the laws of this state neglect or refuse to pay their pro rata of an assessment made under provisions of section 1 of this act within ninety days from the date of notice thereof, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock held by such shareholder or shareholders to be sold at public auction (after thirty days' notice shall have been given by posting such notice of sale in the office of the bank and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto) to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders.

SEC. 3. Should the board of directors of any state or savings bank organized under the laws of this state, the capital of which now is, or hereafter may become impaired, neglect or refuse to proceed as provided in section 1 of this act, they shall by reason of such neglect or refusal, for a period of ten days after being requested in writing by the owner of two-thirds of the stock of such bank by and with the consent of the auditor of state, become individually liable for the amount of such deficiency and said liability may be enforced at law by any creditor of or stockholder in the association; or in case of its subsequent insolvency, by the receiver thereof.

SEC. 4. This act shall be in force and effect from and after its publication in the Iowa State Register and Des Moines Leader, newspapers published in the city of Des Moines, Iowa.

Approved April 24th, 1894.

I hereby certify that the foregoing act was published in the Iowa State Register May 5 and in the Des Moines Leader May 4, 1894.

W. M. McFARLAND, Secretary of State.

CODE OF IOWA, 1897.

SEC. 1878. Assessments. Should the capital stock of any state or savings bank become impaired by losses or otherwise, the auditor of the state may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required, and the board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice-president, attested by the

cashier or secretary of the bank, under its seal, if it have one, and deposited in the post-office, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder. (25 G. A., ch. 29, Sec. 1.)

SEC. 1879. How enforced. Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving thirty days' notice thereof by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and the time and place of sale; proof of all which may be made in the manner provided in the preceding section. After such deficiency is made good, the balance of the proceeds of said sale, if any, shall be paid to the delinquent stockholder. (Same, Sec. 2.)

SEC. 1880. Directors liable. Should the board of directors of such bank having an impaired capital neglect or refuse to proceed as above provided for a period of thirty days after receipt of such order from the auditor of state, they shall become severally liable for any deficiency which liability may be enforced at law by any creditor of or stockholder in the bank, or receiver appointed to wind up its affairs. (Same, Sec. 3.)

CODE OF IOWA, 1924.

9246. Impairment of capital stock—assessments. Should the capital stock of any state or savings bank become impaired by losses or otherwise, the superintendent of bank-

ing may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required. (C., '97, Sec. 1878.)

9247. Compliance with order. The board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the postoffice, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder. (C., '97, Sec. 1878.)

9248. Assessment enforced. Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving thirty days' notice thereof by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and the time and plaec of sale; proof of all which may be made in the manner provided in the preceding section. (C., '97, Sec. 1879.)

9249. Balance of proceeds. After such deficiency is made good, the balance of the proceeds of said sale, if any, shall be paid to the delinquent stockholder. (C., '97, Sec. 1879.)

9250. Liability of directors. Should the board of directors of such bank having an impaired capital neglect or refuse to proceed as above provided for a period of thirty days

after receipt of such order from the superintendent of banking, they shall become severally liable for any deficiency, which liability may be enforced at law by any creditor of or stockholder in the bank, or receiver appointed to wind up its affairs. (C., '97, Sec. 1880.)

CHAPTER 181, ACTS 41 G. A. OF IOWA.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Service of notice—personal liability. Section nine thousand two hundred forty-eight (9248) of the code, 1924, is hereby amended by striking out the word "thirty" in line eight (8) thereof and substituting therefor the word "ten"; also, by inserting after the word "thereof" in line eight (8) of said section the words "by personal service or".

Section nine thousand two hundred forty-eight (9248) is also amended by adding at the end of said section the following: "Should the proceeds of a sale hereunder of all of the stock of any stockholder be insufficient to satisfy his entire assessment liability he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder."

SEC. 2. Publication clause. This act being deemed of immediate importance, shall be in full force and effect from and after its publication in the Des Moines Register, a newspaper published in the city of Des Moines, Iowa, and the Washington Evening Journal, a newspaper published at Washington, Iowa.

Approved March 10, A. D. 1925.

I hereby certify that the foregoing act was published in Plain Talk March 12, 1925, and the Washington Evening Journal March 13, 1925.

W. C. RAMSAY, Secretary of State.

9246. Impairment of capital stock—assessments. Should the capital stock of any state or savings bank become impaired by losses or otherwise, the superintendent of banking may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required. (C., '97, Sec. 1878; C., '24, Sec. 9246.)

9247. Compliance with order. The board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the postoffice, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder. (C., '97, Sec. 1878; C., '24 Sec. 9247.)

9248. Assessment enforced. Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving ten days' notice thereof by personal service or by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, the amount due thereunder from the stockholder, and the time and place of sale; proof of all which may be made in the manner provided in the preceding section. (C., '97, Sec. 1879; C., '24, Sec. 9248; 41 G. A., ch. 181, Sec. 1.)

9248-a1. Liability for deficiency. Should the proceeds of a sale under the preceding section of all of the stock of any stockholder be insufficient to satisfy his entire assessment liability he shall be personally liable for the deficiency, which may be collected by suit brought in the name of the bank against such stockholder. (41 G. A., ch. 181, Sec. 1.)

9249. Balance of proceeds. After such deficiency is made good, the balance of the proceeds of said sale, if any, shall be paid to the delinquent stockholder. (C., '97, Sec. 1879; C., '24, Sec. 9249.)

9250. Liability of directors. Should the board of directors of such bank having an impaired capital neglect or refuse to proceed as above provided for a period of thirty days after receipt of such order from the superintendent of banking, they shall become severally liable for any deficiency, which liability may be enforced at law by any creditor of or stockholder in the bank, or receiver appointed to wind up its affairs. (C., '97, Sec. 1880; C., '24, Sec. 9250.)